

Message Text

UNCLASSIFIED

PAGE 01 STATE 138406 TOSEC 060014
ORIGIN L-03

INFO OCT-01 EUR-12 EB-07 ISO-00 SSO-00 CCO-00 CAB-05
CIAE-00 COME-00 DODE-00 DOTE-00 INR-07 NSAE-00
EPG-02 FAA-00 INRE-00 SS-15 NSC-05 NSCE-00 /057 R

DRAFTED BY L/EB:PTRIMBLE
APPROVED BY L/EB:PTRIMBLE
EB/OA/AVP:AJWHITE (INFO)
EUR: MR. DOBBINS (INFO)
EUR/NE:NACHILLES (INFO)
S/S-O:LRMACFARLANE

-----150205Z 070695 /64

O 150129Z JUN 77 ZFF5
FM SECSTATE WASHDC
TO AMEMBASSY LONDON IMMEDIATE
INFO USDEL SECRETARY IMMEDIATE
AMEMBASSY PARIS

UNCLAS STATE 138406 TOSEC 060014

E.O. 11652: N/A

TAGS: EAIR

SUBJECT: COURT OF APPEALS DECISION ON CONCORDE

1. SUMMARY: SECOND CIRCUIT COURT OF APPEALS, IN OPINION FOR UNANIMOUS COURT BY CHIEF JUDGE KAUFMAN, HELD THAT COLEMAN ORDER DID NOT PREEMPT POWER OF PORT AUTHORITY TO ESTABLISH REASONABLE NOISE CONTROLS ON CONCORDE BUT REMANDED CASE TO DISTRICT COURT FOR EVIDENTIARY HEARING ON QUESTION OF WHETHER PORT AUTHORITY DELAY IN PROMULGATING REASONABLE NOISE REGULATION IS REASONABLE OR WHETHER IT IS SO EXCESSIVE AS TO CONSTITUTE UNFAIR DISCRIMINATION AND AN UNDUE BURDEN ON COMMERCE. END SUMMARY.

UNCLASSIFIED

UNCLASSIFIED

PAGE 02 STATE 138406 TOSEC 060014

2. 23-PAGE OPINION OPENED WITH HISTORY OF PORT AUTHORITY NOISE REGULATION. IN 1951 PORT AUTHORITY ADOPTED REGULATION STILL IN FORCE PROHIBITING ANY JET FROM TAKING OFF OR LANDING WITHOUT PERMISSION. PURPOSE OF REGULATION SAID TO BE TO EMPHASIZE IMPORTANCE OF ELIMINATION OF EXCESS NOISE. IN EARLY '50'S COMET AND BOEING PROTOTYPE JET TRANSPORT DENIED PERMISSION TO LAND. IN 1955 PORT AUTHORITY COMMISSIONED

STUDY, ADOPTED 112PNDB STANDARD. AFTER NOISE-REDUCING MEASURES TAKEN COMET AND BOEING 707 ACCORDED LANDING RIGHTS. UNTIL MARCH 11, 1976 CONCORDE BAN 112PNDB STANDARD UNIFORMLY APPLIED TO ALL AIRCRAFT.

3. COURT THEN TRACED HISTORY CONCORDE DEVELOPMENT POINTING OUT LARGE INVESTMENT AND POLITICAL ASPECTS INCLUDING STATUS OF CONCORDE AS RESPONSE TO AMERICAN DOMINATION OF AIRCRAFT MARKET AND SYMBOL OF EUROPEAN COOPERATION. COURT ALSO NOTED CARRIER CONTENTION THAT CONCORDE CAN MEET 112 PNDB TEST.

4. FOLLOWING DETAILED DESCRIPTION OF COLEMAN DECISION AND REASONING, NOT SUMMARIZED HERE, COURT NOTED IMPORTANCE OF 16-MONTH TEST PERIOD TO ASSURE UK AND FRANCE THAT US DETERMINED TO AFFORD CONCORDE FAIR TRIAL. COURT SAID OUR DECISION ON CONCORDE IS CERTAIN TO AFFECT STRUCTURE OF FOREIGN POLICY AND SAID TREATY ARRANGEMENTS FOR INTERNATIONAL AVIATION MAY BE UNDERMINED BY DETERMINATION PERCEIVED TO BE UNJUST, SUCH AS BAN WITHOUT FAIR TRIAL.

5. THE COURT THEN NOTED COLEMAN CONSIDERED ENVIRONMENTAL COST TO BE OUTWEIGHED BY BENEFITS OF TEST, BUT SAID COLEMAN EXPLICITLY RECOGNIZED THE RIGHT OF PORT AUTHORITY TO REFUSE LANDING RIGHTS TO CONCORDE, QUOTING FOOTNOTE SIX AND ALSO CITING STATEMENTS BY SECRETARY ADAMS AND PRESIDENT CARTER AND USG AMICUS BRIEF.

6. FOLLOWING LENGTHY INTRODUCTION SUMMARIZED ABOVE COURT UNCLASSIFIED

UNCLASSIFIED

PAGE 03 STATE 138406 TOSEC 060014

REVERSED DISTRICT JUDGE POLLACK HOLDING COLEMAN DECISION DID NOT PRECLUDE EXERCISE OF POWER OF PORT AUTHORITY.

7. COURT THEN SAID REASONABLENESS OF DELAY WAS NEW QUESTION REQUIRING OPPORTUNITY FOR PORT AUTHORITY TO PRESENT FACTS. DISCUSSING FEDERAL REGULATORY SCHEME COURT SAID REGULATION OF NOISE IS COOPERATIVE MATTER, LEAVING CONTROL OF AIRSPACE MANAGEMENT IN FEDERAL GOVERNMENT, CITING THE BURBANK DECISION, AND PRECLUDING LOCAL COMMUNITIES FROM CONTROLLING NOISE OF OVERFLYING JETS. HOWEVER PROTECTING LOCAL POPULATION FROM AIRPORT NOISE HAS BEEN LEFT TO LOCAL AIRPORT OPERATOR. NEVERTHELESS, LOCAL AUTHORITY ONLY HAS POWER TO PROMULGATE REASONABLE, NON-ARBITRARY AND NON-DISCRIMINATORY REGULATIONS THAT ESTABLISH ACCEPTABLE NOISE LEVELS. ANY OTHER CONDUCT BY AIRPORT PROPRIETOR WOULD FRUSTRATE STATUTORY SCHEME AND UNCONSTITUTIONALLY BURDEN COMMERCE.

8. COURT ADDED THAT ITS CONCLUSION THAT ONLY REASONABLE

REGULATIONS PERMITTED IS SUPPORTED BY TREATY OBLIGATIONS, POINTS OUT THAT BAN COULD BE ATTACKED AS DISCRIMINATORY AND NOTING THAT NON-DISCRIMINATORY TREATMENT IS TOUCHSTONE OF INTERNATIONAL AGREEMENTS. COURT THEN SAYS BILATERAL COMPACTS INDICATE EACH PARTY WILL SUBJECT AIR CARRIER OF OTHER TO EVENLY-APPLIED LAWS AND REGULATIONS, CITING ALSO

CHICAGO CONVENTION. ON NEXT PARAGRAPH COURT ADVERTS TO ARGUMENT THAT PORT AUTHORITY BAN NOT A REGULATION AND SAYS FAILURE TO APPLY EVEN-HANDED REGULATION COULD BE FORBIDDEN DISCRIMINATION, BUT COURT ADDED FOREIGN AIRLINES COULD BE SUBJECT TO LOCAL REGULATION AND ALSO SAID REGULATION COULD TAKE ACCOUNT OF DIFFERENCES IN NOISE CHARACTERISTICS OF AIRCRAFT. THEN COURT STATES THAT THE ISSUE IS WHETHER THE CONCORDE REVOLUTIONARY TECHNOLOGY JUSTIFIES A TEMPORARY BAN, SAYS THE COURT IS NOT CALLED ON TO DECIDE THIS SENSITIVE QUESTION, PRESUMABLY BECAUSE OF LACK OF RECORD, AND UNCLASSIFIED

UNCLASSIFIED

PAGE 04 STATE 138406 TOSEC 060014

POINTS OUT THAT IF PORT AUTHORITY ACTION IS ARBITRARY AND CAPRICIOUS A SERIOUS QUESTION WOULD BE RAISED CONCERNING COMPATIBILITY WITH TREATY ARRANGEMENTS.

9. IN SEPARATE CONCLUDING SECTION COURT STATES THAT IT IS NOT DECIDING WHETHER CONCORDE MAY LAND, BUT THERE REMAINS THE QUESTION WHETHER DELAY IN PROMULGATING REASONABLE NOISE REGULATIONS IS SO EXCESSIVE AS TO CONSTITUTE UNFAIR DISCRIMINATION AND AN UNDUE BURDEN ON COMMERCE. COURT THEREFORE REMANDS CASE FOR EVIDENTIARY HEARING ON REASONABLENESS OF 13-MONTH BAN.

10. ON FINAL PARAGRAPH COURT ADDED THAT EVEN IF DISTRICT COURT DID NOT FIND UNREASONABLE DELAY IT IS IN INTEREST OF ALL THAT THIS INTERMINABLE STRIFE BE BROUGHT TO AN END, AND COURT URGED PORT AUTHORITY TO CONCLUDE ITS STUDY AND FIX REASONABLE NOISE STANDARDS WITH DISPATCH.

AMEN. CHRISTOPHER

UNCLASSIFIED

NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01-Jan-1994 12:00:00 am
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: CIVIL AVIATION, COURT DECISIONS, CONCORDE, NOISE ABATEMENT
Control Number: n/a
Copy: SINGLE
Sent Date: 15-Jun-1977 12:00:00 am
Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01-Jan-1960 12:00:00 am
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1977STATE138406
Document Source: CORE
Document Unique ID: 00
Drafter: PTRIMBLE
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D770212-1120
Format: TEL
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1977/newtext/t19770654/aaaabuxl.tel
Line Count: 158
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 4b11777c-c288-dd11-92da-001cc4696bcc
Office: ORIGIN L
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: n/a
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 10-Nov-2004 12:00:00 am
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 2140992
Secure: OPEN
Status: NATIVE
Subject: COURT OF APPEALS DECISION ON CONCORDE
TAGS: EAIR
To: LONDON
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/4b11777c-c288-dd11-92da-001cc4696bcc
Review Markings:
Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
22 May 2009
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009